

BEFORE THE FISH, WILDLIFE AND PARKS COMMISSION  
OF THE STATE OF MONTANA

In the matter of the amendment of )  
ARM 12.11.202, 12.11.205, 12.11.207, ) NOTICE OF PUBLIC HEARINGS ON  
12.11.212, 12.11.215 and 12.11.220 ) PROPOSED AMENDMENT  
regarding recreational water use of the )  
Beaverhead and Big Hole Rivers )

TO: All Concerned Persons

1. On May 26, 2010 at 6:00 p.m. the Fish, Wildlife and Parks Commission (commission) will hold a public hearing at Beaverhead County Search and Rescue Building, 1116 Highway 41, Dillon, Montana, to consider the amendment of the above-stated rules.

On May 27, 2010 at 6:00 p.m. the commission will hold a public hearing at the War Bonnet Inn, 2100 Cornell Avenue, Butte, Montana, to consider the amendment of the above-stated rules.

2. The commission will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, please contact the commission no later than May 17, 2010, to advise us of the nature of the accommodation that you need. Please contact Jessica Fitzpatrick, Fish, Wildlife and Parks, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-9785; fax (406) 444-7456; e-mail jfitzpatrick@mt.gov.

3. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

12.11.202 RIVER DEFINITIONS The following definitions apply to this subchapter:

(1) "Beaverhead River" means that portion of the river from its headwaters to Jessen Park in Twin Bridges.

(2) "Big Hole River" means the river from its headwaters to its confluence with the Jefferson River.

(1) through (3) remain the same but are renumbered (3) through (5).

~~(4)~~ (6) "Official access site" means those river access sites that are publicly owned, managed, and maintained as an access point. The following are official access sites on the Big Hole River:

(a) through (q) remain the same.

(r) Mudd Creek Bridge BLM fishing access site.

(5) through (7) remain the same but are renumbered (7) through (9).

AUTH: 87-1-301, 87-1-303, MCA

IMP: 87-1-303, MCA

12.11.205 BEAVERHEAD RIVER RECREATIONAL USE RESTRICTIONS

(1) Starting on the third Saturday in May through Labor Day, recreational use of the Beaverhead River from Clark Canyon Dam to ~~its mouth~~ Jessen Park in Twin Bridges shall be allowed and restricted in designated river reaches as follows:

(a) through (2)(b) remain the same.

AUTH: 87-1-301, 87-1-303, MCA

IMP: 87-1-303, MCA

12.11.207 REVIEW OF RIVER RECREATION RULES FOR BEAVERHEAD RIVER (1) The commission shall review the rules governing recreational use on the Beaverhead River ~~within every~~ five years ~~after the adoption of these rules~~.

(2) remains the same.

AUTH: 87-1-301, 87-1-303, MCA

IMP: 87-1-303, MCA

12.11.212 REVIEW OF RIVER RECREATION RULES FOR THE BIG HOLE RIVER (1) The commission shall review the rules governing recreational use on the Big Hole River ~~within every~~ five years ~~after the adoption of these rules~~.

(2) remains the same.

AUTH: 87-1-301, 87-1-303, MCA

IMP: 87-1-303, MCA

12.11.215 NEW OUTFITTER MORATORIUM AND OUTFITTER RESTRICTIONS ON THE BEAVERHEAD RIVER (1) remains the same.

(2) An outfitter authorized to outfit on the Beaverhead River forfeits all his/her client days and is no longer authorized to outfit on the Beaverhead River if one or more of the following occur:

(a) an outfitter does not report any use for any two consecutive years, effective June 17, 2005;

(b) an outfitter did not report any use for the five years prior to December 31, 2004; or

(c) the license of an outfitter has ~~lapsed~~ expired.

(3) through (11) remain the same.

AUTH: 87-1-301, 87-1-303, MCA

IMP: 87-1-303, MCA

12.11.220 NEW OUTFITTER MORATORIUM AND OUTFITTER RESTRICTIONS ON THE BIG HOLE RIVER (1) remains the same.

(2) An outfitter authorized to outfit on the Big Hole River forfeits all his/her client days and is no longer authorized to outfit on the Big Hole River if one or more of the following occur:

- (a) an outfitter does not report any use for any two consecutive years, effective June 17, 2005;
  - (b) an outfitter did not report any use for the five years prior to December 31, 2004; or
  - (c) the license of an outfitter has ~~lapsed~~ expired.
- (3) through (11) remain the same.

AUTH: 87-1-301, 87-1-303, MCA

IMP: 87-1-303, MCA

STATEMENT OF REASONABLE NECESSITY: Jessen Park provides the nearest upstream public float access to the upper section of the Jefferson River. Defining the Beaverhead River to end at Jessen Park in Twin Bridges would enable outfitters to gain float access to the upper Jefferson River regardless of whether they have been issued a Beaverhead or Big Hole permit and would enable permitted outfitters to use this access site to float the upper Jefferson River without having to use allocated client days. Defining the Big Hole River would clarify that the rules apply to the entire Big Hole River from its headwaters to its confluence with the Jefferson River.

Mudd Creek Bridge is incorrectly identified in the rules as a Fish, Wildlife and Parks fishing access sites. The site should be correctly identified as a Bureau of Land Management site.

A rule stating that the commission will review the rules every five years would ensure a periodic review occurs to assess the effectiveness of the rules.

Changing "lapsed" to "expired" would be more consistent with the Montana Board of Outfitters license status definitions and would clarify that an outfitter forfeits all of his/her client days and is no longer authorized to outfit on the Beaverhead and/or Big Hole rivers if their license has not been renewed within 45 days from the renewal date. A "lapsed license" means a license that has not been renewed by the license renewal date. A lapsed license may be reactivated at any time within 45 days following the license renewal date. This rule change would prevent the loss of outfitting privileges on the Beaverhead and/or Big Hole rivers solely due to failure to meet the license renewal date.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Fish, Wildlife and Parks, Charlie Sperry, P.O. Box 200701, Helena, MT 59620-0701, fax 406-444-4952, or e-mail them to [csperry@mt.gov](mailto:csperry@mt.gov). Any comments must be received no later than June 4, 2010.

5. Charlie Sperry or another hearings officer appointed by the department has been designated to preside over and conduct these hearings.

6. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the commission. Persons who wish to have their name added to the list shall make written request that includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to Fish, Wildlife, and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, faxed to the office at (406) 444-7456, or may be made by completing the request form at any rules hearing held by the department.

7. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

/s/ Bob Ream

Bob Ream, Chairman

Fish, Wildlife and Parks Commission

/s/ Robert N. Lane

Robert N. Lane, Rule Reviewer

Department of Fish, Wildlife and Parks

Certified to the Secretary of State April 19, 2010